the office must be given to the Registrar of Companies within fourteen days under the 1948 Companies Act, 1972, section 9(3). A third party without actual knowledge is not affected unless the notice is published within 15 days of the change, and even within the 15 days, is not affected if he is unavoidably prevented from knowing of the change (European Communities Act, 1972, s. 9(4). (See Modern Company Law by L.C.B. Gower, 4th Edn. P. 312, Footnote 23 and pp. 499, 500).

Having drawn our attention to the English statute law, counsel for appellants submitted that the effective date of change of address would be the date of registration, perhaps by analogy with the English requirement for gazetting.

Such stringent requirements governing change of situation of registered office of companies may perhaps have been dictated by the United Kingdom's entry into the larger European Community and the need to facilitate dealings between firms in U.K. and those of other E.E.C. countries.

Two authorities were cited to us which are not quite helpful, because the facts therein are materially different.

In *P.T. Pelajaran Nasional Indonesia* v. *Joo Seang & Co. Ltd.*[1] the plaintiffs had served the writ at the wrong address because of mis-information from the Registrar of Companies, who had registered the change of address by the defendants over two years earlier.

In *Kwong Kum Sun Chan Glass Merchant* v. *Ahong Construction Co. (Malaya) Ltd.*[2] the defendants had moved, leaving a notice at the main door of the old premises regarding the change of address but the writ was served within the period of one month he had under section 120 of the Companies Act 1965 to notify the Registrar, no such notification having yet been sent.

Mr. Wong for the respondents maintains that the date of the lodgement of the section 120 notice to the Registrar should be the effective date. We are inclined to agree with him. Whether the particulars are in due course (and as in this case very much later), entered into any register, is in our view irrelevant. Once the notice of change under section 120 has been lodged, anyone who wishes to ensure that a writ is served at the proper address can on payment of the prescribed fee avail himself of his right under section 11(2)(a) of the Act to "inspect any document filed or lodged with the Registrar".

We would therefore dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Suhaimi Khor Zulkifli & Chang; Low & Lee.*

SABARUDIN BIN SHAMSUDDIN v. AISHAH BTE. KUNTOM

[A.C.J. (Abdul Razak J.) February 25, 1984]

[Johore Bahru – Civil Appeal No. 7 of 1982]

Practice & Procedure – Appellate court allowing appeal against finding of facts by learned magistrate – Meaning of "demeanour".

The respondent lent to her married colleague money. She was single. They, however, became close friends. When their relationship ended she became infuriated and claimed for the sum of $8,142/- against him. In support of her case, the respondent produced an I.O.U. Chit (P.1) and her own account of the loans (P.2). P.1 showed the sums given by her from July to October 1977 totalling $2,481/-. P.2 showed those given also from July 1977 but to September 1978 totalling $8,402/- including the sums shown in P.1. The learned magistrate found that P.2 was corrcborative of the respondent's oral evidence and gave judgment in favour of the respondent. The appellant appealed.

Held, allowing the appeal: (1) the learned magistrate had not apparently considered that they being in duplicate there was a serious contradiction between P.1 and P.2 bearing on their consistency and accuracy;

(2) the learned magistrate seemed to have thrown caution to the wind altogether, as if forgetting that if P.1 and P.2 were in serious contradiction then all that she had to rely upon was the respondent's demeanour;

(3) under the circumstances a fair decision between the parties would be that the sum of $3,558/- be apportioned proportionately between them, and that it be halved and added to the sum of $2,016/- shown to be requested by the appellant, giving a round figure of $4,000/-;

(4) costs should also be halved.

Obiter dictum: ". . . demeanour may be confused with the ability to convince another how pathetic one's plight is which can never form a part of judicial decision. Demeanour may mean the ability to answer a question at the spur of the moment which may in fact turn out later to be false. But whichever form it takes, it can never replace or substitute for facts that are established or are reasonably

inferred because, in the final analysis, they alone must form the basis on which a decision can be made."

CIVIL APPEAL.

Subra Naicker for the appellant.
K.S. Dass (mentioning) for the respondent.

Cur. Adv. Vult.

Abdul Razak J.: The appellant and the respondent were teachers at the same school. The former was married with children. The latter was single. They, however, became close friends. He borrowed money from her. He was a kind of gigolo. She was in the unfortunate position of being the victim of one but as expected their relationship ended after he had no more use for her. A happy story has to come to an end sometimes. He had nothing to lose but she had everything to lose. It left her infuriated, although, if everything had gone on well between them, she said she would not have pressed the present claim. But the claim was pressed before the learned Magistrate and became the subject of appeal before me. It was for the sum of $8,142/- which was lent to him during happier days. Judgment was given in her favour. The $8,142/- consisted of sums given to him from time to time when he needed them. She could afford them being single, but he had a wife and five children to look after. To support her case, she produced an I.O.U. Chit exhibited as P.1 and her own account of the loans exhibited as P.2. P.1 showed the sums given by her from July to October 1977 totalling $2,481/-. P.2 showed those given also from July 1977 but to September 1978 totalling $8,402/-, including those sums shown in P.1. The respondent said there were other sums not included in P.2, which included, made a grand total of $8,142/-. But this fact must at once be said, that if P.2 included the sum in P.1 as well which seems clearly to be the case then there is clearly thus a duplication for which the appellant was unfairly asked to pay an extra $2,000/- odd or so. The respondent clearly cannot have both, especially, since other than the figures $200/- and $1,000/- shown in P.2, the other sums in P.1 had, it would appear, been repeated again in P.2. The amount of $2,468/- must thus be deducted from the sum of $8,142/- in P.2 leaving a balance of $5,574/- due. But out of this amount, one must note that the actual amount which had been asked for by the appellant as shown by the letters sent by him, totalled only $2,016/-. There is thus a sum of $3,558/- alleged to have been made orally, but unsupported by any evidence, documentary or otherwise, other than what the respondent herself wrote down in P.2. Was the Court entitled to take this amount also into consideration? The learned Magistrate had, in giving the total amount claimed of $8,142/-, clearly thought so. Her reason was because she found that P.2 was corroborative of the respondent's oral evidence. She had also been impressed by her demeanour. But she had not apparently considered that they being in duplicate there was a serious contradiction between P.1 and P.2, bearing on their consistency and accuracy. That it means if an account had been kept by the respondent it was kept badly enough that no reasonable person could have relied upon it *wholly* without looking for other evidence in support. It should have impressed upon her that being truthful and being able to maintain a consistent account are two different things altogether. The learned Magistrate had also failed to consider the serious suggestion by the appellant's counsel that P.2 may not in fact had been entered by the respondent in 1977 as alleged but in 1978. This was revealed by the fact that the leaf from the diary on which the entries were made did not give the year. It only gave the month and the day of the month and the day of the week as Monday the 25th December which incidentally was a date in 1978 and not 1977, the 25th December being a Monday in 1978 and a Friday in 1977. Counsel for the appellant pointed this out in his submission but this fact was not adverted to or refuted by counsel for the respondent in his reply. It becomes questionable thus whether the account had in fact been compiled, as alleged by the respondent, consistently from 1977 to 1978 when the diary it was written on had been one in 1978. Thus whether she had in fact made the entries, as she said, whenever the payments were made naturally also becomes questionable, because it seems to me it would have been simply easier to enter the loans made against the respective days and months they were made in the diary and no one could have been mistaken as to when they were done. It would stand to reason, therefore, as counsel suggested, that she might well have compiled the figures at one and the same time, all the more since there were no dates shown against the sums alleged to be borrowed. It follows that since there were no other documents to support her, that she had made the account, at best, from her own memory, the accuracy of which, spread over a period of one year, was thus inevitably thrown into a matter of doubt. This fact, however, was sadly missed by the learned Magistrate

because she merely dismissed it thus "Whether the plaintiff wrote the figures in one day or a space of 15 minutes was not the real question. What was material was whether P.2 truly represented all that the defendant owed to the plaintiff from July 1977 to September 1978". But the crucial question was how would she know whether P.2 truly represented what the appellant owed if the accuracy of P.2 itself was cast in doubt. The point she failed to account for was if the respondent has written in a matter of one day or 15 minutes as she puts it the figures in P.2 it would only contradict and indeed demolish her story that she had made the entries day to day as the payments were made by her for a period of one year and it becomes a question then whether the respondent was telling the *whole* truth about her account. It is to be noted that the sum of $3,558/- alleged to be made orally consisted of big and small sums. Discounting the $50/- and below there were payments made consisting of four $100/-, four $150/-, one $250/- one $300/- and one $500/-. Considering that even for such a small sum of $12/- he had chosen to write a note to the respondent, it seems unreasonable not to assume that if he had really asked for as much as $500/- or $300/- the appellant would not also have done the same. Faced with these facts and the fact that nowhere in the account is it indicated that the appellant had received or acknowledged the loans, I do not think it was right that having left the question of accuracy of the account entirely to the respondent's memory, the appellant should be made wholly to bear the $3,558/-. It is true the loans were made during friendlier times, but it is also a fact that there were more than just one loan given for some period of time when the question of remembering them must come into serious contention. The loans could have been given in trust and confidence, but the fact that they were so merely emphasises the point that a proper account need not necessarily have been kept for the need for it did not really arise. One has also to bear this important fact in mind. The parties were more than just friends. They needed each other. He was always hard for money. She was ever ready and willing to help because being single she always had some to spare. She had in fact admitted this fact. She might well have thus given him the money with no thought even of ever getting it back especially when one recalls her saying that if everything had gone well between them she would not have pressed the claim. But now that the cause for it had arisen, she might want to get all her money back, but of course in doing so one may tend to be overacting oneself. To illustrate this point, one need only refer to her demeanour in answer to P.1. She said it was an I.O.U. Chit from the appellant and in doing so I suppose she would have the lower Court to believe that the words "Belum dibayar lagi" therein had been written by the appellant but when cross-examined she admitted that those words were not written by the appellant but by her, which therefore at once extinguished P.1 as an I.O.U. Chit.

But, when all is said and done, one cannot help sympathising with the plight of the respondent; she had a reason to be angry, but an angry person sometimes does things without being consciously aware of them. And it is also a fact of life we cannot ignore that people do throw endearing gestures, monetary or otherwise, sometimes to endearing ones to show that one cares or even pretending it. But if the friendship lasts very long, then the number of times given, their figures and the type of gestures made may simply be lost in oblivion. If one seeks to recall them again, then the recalling memory may be faulty or it may be an impossible task altogether. But the way the learned Magistrate proceeded, she seemed to have thrown caution to the wind altogether, as if forgetting that if P.1 and P.2 were in serious contention then all that she had to rely upon was the respondent's demeanour. But demeanour may be confused with the ability to convince another how pathetic one's plight is which can never form a part of judicial decision. Demeanour may mean the ability to answer a question at the spur of the moment which may in fact turn out later to be false. But whichever form it takes, it can never replace or substitute for facts that are established or are reasonably inferred because, in the final analysis, they alone must form the basis on which a decision can be made. I cannot help feeling that under the circumstances a fair decision between the parties would be that the sum of $3,558/- be apportioned proportionately between them, and that it be halved and added to the sum of $2,016/- shown to be requested by the appellant, giving a round figure of $4,000/-.

I would also order that the costs be halved.

Appeal allowed

Solicitors: *Subra Naicker & Co.; Abdul Razak Ahmad.*